

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Angelo F. McKelvie,

Plaintiff,

vs.

D.H.O. Brown,

Defendant.

Civil Action No. 9:22-cv-1018-CMC

ORDER

This matter is before the court on Plaintiff's Complaint, alleging violations of his constitutional rights. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Molly H. Cherry for pre-trial proceedings.

Defendant filed a motion for summary judgment on January 22, 2024. ECF No. 48. The next day a *Roseboro* Order was entered because Plaintiff is proceeding *pro se*, advising him of the significance of a motion to dismiss and the need to file a response. ECF No. 49. Plaintiff filed a motion for extension of time, asserting he had served defendant with a motion for discovery, and asked for more time to respond to the summary judgment motion. ECF No. 51. The Magistrate Judge granted the additional time to respond to the motion, but noted the discovery deadline expired on November 21, 2023, and as such the discovery was untimely served. ECF No. 52. She denied the motion for additional time to permit further discovery, but extended the response to motion date to April 18, 2024. *Id.* Plaintiff did not file a response to the motion.

On May 7, 2024, the Magistrate Judge issued a Report and Recommendation ("Report") recommending this action be dismissed for lack of prosecution. ECF No. 55. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the

serious consequences if he failed to do so. Plaintiff failed to file objections or any other filing with this court, and the time to do so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After a review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error. Accordingly, the court adopts the Report by reference in this Order. This action is dismissed without prejudice for failure to prosecute.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
May 29, 2024